

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MARIA GUZMAN MORALES &
MAURICIO R. GUARJARDO,

Plaintiffs,

v.

FARMLAND FOODS, INC. A Delaware
Corporation and Subsidiary of Smithfield
Foods,

Defendant.

CASE NO. 8:08-cv-504

**DEFENDANT’S NOTICE OF SUPPLEMENTAL AUTHORITY IN SUPPORT OF ITS
MOTION FOR SUMMARY JUDGMENT – CLAIMS BASED ON TIME IN EXCESS OF
“REASONABLE TIME” AND DE MINIMIS ACTIVITIES**

Defendant, Farmland Foods, Inc. (“Farmland”), respectfully submits this Notice of Supplemental Authority in further support of its pending Motion for Summary Judgment – Claims Based on Time In Excess of “Reasonable Time” and De Minimis Activities (Docket Entry No. 143) (the “Reasonable Time Motion”).

In Farmland’s Reasonable Time Motion, Farmland asked the Court to grant it summary judgment and dismiss Plaintiffs’ claims to the extent they claim Farmland violated the FLSA by not individually measuring each employee’s time spent in any compensable pre- and post-shift and pre- and post-break donning, doffing and related activities. (Mot. at p. 3). The same issue was presented and recently decided in two cases, Hosler v. Smithfield Packing Co., Inc., Case No. 7:07-cv-00166-H, 2010 U.S. Dist. LEXIS 101916 (E.D.N.C. Sept. 27, 2010)¹ and Parker v. Smithfield Packing Co., Inc., Case No. 7:07-cv-00176-H, 2010 U.S. Dist. LEXIS 101927

¹ The case was previously styled Lewis v. Smithfield Packing Co., Inc., but the court changed the named plaintiff to Hosler after it dismissed plaintiff Lewis from the lawsuit.

(E.D.N.C. Sept. 27, 2010). Both cases involve current and former hourly production employees working in the same kind of hog processing plant as the plant at issue in the current lawsuit.

Attached as Exhibit A is a copy of the magistrate judge's memorandum and recommendation on the "reasonable time" issue in Hosler. The relevant portion of the magistrate judge's memorandum and recommendation, which recommended that the court enter summary judgment and dismiss plaintiffs' claim that the FLSA required their employer to measure each individual's time for the activities in question, can be found at page *48 of Exhibit A. Hosler, Case No. 7:07-cv-166-H, 2010 U.S. Dist. LEXIS 101779, *48 (E.D.N.C. Aug. 31, 2010). Attached as Exhibit B is a copy of the district judge's order adopting the magistrate judge's memorandum and recommendation on the "reasonable time" issue in Hosler. The relevant portion of the district judge's order dismissing with prejudice the plaintiffs' claim that the FLSA required defendant to measure each individual employee's time spent on compensable pre- and post-production activities, can be found at page *8 of Exhibit B. Hosler, Case No. 7:07-cv-166-H, 2010 U.S. Dist. LEXIS 101916, *8 (E.D.N.C. Sept. 27, 2010). The corresponding magistrate judge's memorandum and recommendation and district court's order adopting the same in Parker are attached as Exhibit C and Exhibit D, respectively. Parker, Case No. 7:07-cv-166-H, 2010 U.S. Dist. LEXIS 101185, *47- *48 (E.D.N.C. Aug. 31, 2010); Parker, Case No. 7:07-cv-166-H, 2010 U.S. Dist. LEXIS 101916, *7 (E.D.N.C. Sept. 27, 2010).

Thus, the orders in Hosler and Parker provide further support for Farmland's Reasonable Time Motion. For these reasons, and those already set forth in Farmland's Reasonable Time Motion and accompanying memorandum of law, Farmland respectfully requests that this Court grant its Motion for Summary Judgment – Claims Based on Time In Excess of "Reasonable Time" and De Minimis Activities.

Respectfully submitted this 25th day of October, 2010.

s/ Allison D. Balus

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CERTIFICATE OF SERVICE

I hereby certify that on October 25, 2010, I served the foregoing **DEFENDANT’S NOTICE OF SUPPLEMENTAL AUTHORITY IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT – CLAIMS BASED ON TIME IN EXCESS OF “REASONABLE TIME” AND DE MINIMUS ACTIVITIES** through electronic filing. Notice of this filing will be sent to the following by operation of the Court’s electronic filing system. Parties may access this filing through the Court’s system.

Carolyn H. Cottrell
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Philip A. Downey
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s/ Allison D. Balus
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